

**SUPREME COURT OF CALIFORNIA
ORAL ARGUMENT CALENDAR
SACRAMENTO SESSION
FEBRUARY 14 and 15, 2006**

(FIRST AMENDED)

The following cases are placed upon the calendar of the Supreme Court for oral argument at its courtroom in the Stanley Mosk Library and Courts Building, Sacramento, California, on February 14 and 15, 2006.

TUESDAY, FEBRUARY 14, 2006—1:00 P.M.

- (1) S125171 Lyle v. Warner Bros. Television
- (2) S131048 People v. Shabazz (Samuel)
- (3) S032509 People v. Chatman (Erik Sanford) [*Automatic Appeal*]
(*Chin, J., not participating; Gemello, J., assigned justice pro tempore*)
- (4) S029476 People v. Boyer (Richard) [*Automatic Appeal*]

WEDNESDAY, FEBRUARY 15, 2006—9:00 A.M.

- (5) S122590 In re Freeman (Fred) on Habeas Corpus
(*Chin and Corrigan, JJ., not participating; Boland, J., assigned justice pro tempore*)
- (6) S128248 John B. v. Superior Court (Bridget B., Real Party in Interest) (*to be called and continued to March 2006 calendar*)
- (7) S123481 Morning Star v. Board of Equalization
- (8) S129052 People v. King (Sean)

2:00 P.M.

- (9) S045982 People v. Avila (Johnny) [*Automatic Appeal*]
(*Chin, J., not participating; Gaut, J., assigned justice pro tempore*)
- (10) S055474 People v. Perry (Clifton) [*Automatic Appeal*]

GEORGE
Chief Justice

If exhibits are to be transmitted to this court, counsel must comply with rule 18(c) of the California Rules of Court.

The following case summaries are issued to inform the public and the press of cases that the Supreme Court has scheduled for oral argument and of their general subject matter. Generally, the descriptions set out below are reproduced from the original news release issued when review in each of these matters was granted and are provided for the convenience of the public and the press. The descriptions do not necessarily reflect the view of the court or define the specific issues that will be addressed by the court.

TUESDAY, FEBRUARY 14, 2006—1:00 P.M.

(1) Lyle v. Warner Bros. Television, S125171

#04-78 Lyle v. Warner Bros. Television, S125171. (B160528; 117 Cal.App.4th 1164; Superior Court of Los Angeles County; BC239047.) Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in a civil action. The court limited review to the following issues: (1) Can the use of sexually coarse and vulgar language in the workplace constitute harassment based on sex within the meaning of the Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.)? (2) Does the potential imposition of liability under FEHA for sexual harassment based on such speech infringe on defendant's rights of free speech under the First Amendment or the state Constitution?

(2) People v. Shabazz (Samuel), S131048

#05-57 People v. Shabazz (Samuel), S131048. (B160417; 125 Cal.App.4th 130; Superior Court of Los Angeles County; BA 203410.) Petition for review after the Court of Appeal modified and otherwise affirmed a judgment of conviction of criminal offenses. This case presents the following issues: (1) Does the special circumstance set forth in Penal Code section 190.2(a)(22), which authorizes a punishment of death or life imprisonment without the possibility of parole for a gang member who "intentionally killed the victim" to further the activities of a criminal street gang, apply to a defendant who fired a gun with the intent to kill

one person but missed and killed another? (2) When a defendant is convicted of an offense that is punishable by a sentence of imprisonment for life without the possibility of parole, is the defendant also subject to a sentence enhancement of 25 years to life under Penal Code section 12022.53(d) for personally discharging a firearm and causing death, or does Penal Code section 12022.53(j) preclude the imposition of that enhancement when the punishment for the defendant's underlying felony is imprisonment for life without the possibility of parole?

(3) People v. Chatman (Erik Sanford), S032509 [Automatic Appeal] (Chin, J., not participating; Gemello, J., assigned justice pro tempore)

This matter is an automatic appeal from a judgment of death.

(4) People v. Boyer (Richard) [Automatic Appeal]

This matter is an automatic appeal from a judgment of death.

WEDNESDAY, FEBRUARY 15, 2006—9:00 A.M.

(5) In re Freeman (Fred) on Habeas Corpus, S122590 (Chin and Corrigan, JJ., not participating; Boland, J., assigned justice pro tempore)

#04-84 In re Freeman (Fred), S122590. Original proceeding. In this case, which is related to the automatic appeal in *People v. Freeman* (1994) 8 Cal.4th 450, the court issued an order to show cause limited to the following issues: Is petitioner entitled to relief on the claims that (1) the trial judge actively colluded with the prosecutor to secure a conviction and death sentence, and (2) the prosecutor improperly exercised peremptory challenges on the basis of religion at the advice of the trial judge?

(6) John B. v. Superior Court (Bridget B., Real Party in Interest), S128248 (to be called and continued to March 2006 calendar)

#04-126 John B. v. Superior Court (Bridget B., Real Party in Interest), S128248. (B169563; 121 Cal.App.4th 1000; Superior Court of Los Angeles County;

BC271134.) Petition for review after the Court of Appeal granted in part and denied in part a petition for peremptory writ of mandate. The court limited review to the following issues: (1) Under California law, may a person be held liable for failure to disclose to a sexual partner the fact that the person has a sexually transmissible disease only when the person *actually knows* he or she has a sexually transmissible disease (see *Doe v. Roe* (1990) 218 Cal.App.3d 1538) or also when the person *reasonably should have known* he or she has such a disease? (2) If the duty to disclose is limited to situations in which a person actually knows he or she has a sexually transmissible disease, did the discovery permitted by the Court of Appeal in the present case violate either traditional standards of discovery (e.g., relevance) or constitutionally protected rights of privacy?

(7) *Morning Star v. State Board of Equalization*, S123481

#04-38 *Morning Star v. State Board of Equalization*, S123481. (C033758; 115 Cal.App.4th 799; Superior Court of Sacramento County; 98AS03539.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issues: (1) Was the decision by the Department of Toxic Substances Control that every business in the state that uses hazardous waste within the meaning of Health and Safety Code 25205.6, such that every nonexempt corporation with more than 50 employees would be subject to the environmental fee assessed under that statute, a “regulation” subject to the provisions of the Administrative Procedure Act (Gov. Code, § 11340 et seq.)? (2) Is the environmental fee assessed by section 25205.6 a regulatory fee or a tax? (3) Does imposition of the fee only on corporations with more than 50 employees deny due process or equal protection of the law under the federal or state Constitution?

(8) *People v. King (Sean)*, S129052

#04-147 *People v. King (Sean)*, S129052. (A104219; unpublished opinion; Superior Court of San Francisco County; 186344.) Petition for review after the

Court of Appeal affirmed in part and reversed in part a judgment of conviction of criminal offenses. This case includes the following issues: (1) Is the offense of possession of a short-barreled rifle (Pen. Code, § 12020(a)(1)) a strict liability offense, or does it require proof that the defendant had some degree of guilty knowledge? (2) If so, what mental state does the statute require the defendant to have?

2:00 P.M.

(9) People v. Avila (Johnny), S045982 [Automatic Appeal] (Chin, J., not participating; Gaut, J., assigned justice pro tempore)

This matter is an automatic appeal from a judgment of death.

(10) People v. Perry (Clifton), S055474 [Automatic Appeal]

This matter is an automatic appeal from a judgment of death.